# Office of Chief Counsel Internal Revenue Service

## memorandum

CC:MSR:HOU:TL-N-4471-99

**MSFriedman** 

date: December 7, 1999

to: Chief, Appeals Division, Houston District

Attn: Judith Clark

from: District Counsel, Houston District

subject: and

Request for Legal Advice and Assistance

This memorandum is in response to your request for advice regarding the appropriate wording for agreements to extend the statute of limitations (Forms 872 and 977) with respect to the above-noted CEP (Nondocketed) Large Case consolidated group and Foreign Sales Corp. The advice which follows was coordinated with our National Office.

### **FACTS**

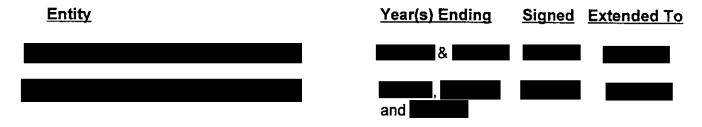
The original parent entity,	(EIN
") filed consolidated corporate income tax re	
for the	fiscal years ending on June 30,
, and . On , the	division of
, was spun off as a separate entity; however, as	s the name was
associated with the business, this new compan	ny took the name, but obtained a
new EIN (For convenience here, thi	
new and new has commenced filing	
parent of this new group for subsequent periods. C	
group composed of new and all its subsidia	•
intends to maintain new and its	s subsidiaries as separate companies
wholly owned by	
Simultaneous with the enineff, what remained of o	ld shanged its name to
Simultaneous with the spinoff, what remained of of and continued on, retaining the original E	
merged with a Swedish firm called	
explains that this merger was accomplished	
, which was then publicly held, exchange	·

shares of for shares of merger and is now a subsidiary of consolidated returns for a new group,	As such	exc su common paren		
The following consents, Forms 872, have extending the statutory periods as indicated as indicate	•	ecured, captione	ed and	
Entity (as styled on form)	Year(s) Endi	ng Signed	Extended To	<u> 2</u>
(Formerly:	&			
)	and			
El* [At the bottom of the first page following the * is: Successor in intere				
to El (Formerly:	)]			
In addition a Transferee Agreement, For June 30, 1998, 1998, and 1998 reflecting (1998) as the transferee.	g	ed for the taxab	le years endin	g )
A Form 977 consent regarding the transf	feree liability has als	o been obtained	d as follows:	
Entity (as styled on form)	Year(s) Ending	Signed Exter	ıded To	
[as transferee for any liability imposed against]	and <b>S</b>			
B.				
subsidiary of old , but which on new	tion it has and contir	nose subsidiarie nues to file its ov	s transferred t	

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The following consents, Forms 872, have been secured, captioned and extending the statutory periods as indicated:

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#### **RECOMMENDATIONS**

A.

The primary rule for returns filed on a consolidated basis is that the common parent for a particular year is the proper party to extend the statute of limitations on behalf of itself and each member of a consolidated group. Treas. Reg. § 1.1502-77(a) and (c). The common parent remains the agent for the members of the consolidated group for years during which it was the common parent as long as it remains in existence and regardless of whether it is still the common parent, whether one or more of the subsidiaries have ceased being members of the group. or even whether the group terminates. Treas. Reg. § 1.1502-77(a); Temp. Treas. Reg. § 1.1502-77T; Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985). Where the common parent of the group ceases to be the common parent, Temp. Treas. Reg. § 1.1502-77T also provides for certain alternative agents, including certain successor entities.

As , which is the continuation of old, remains in existence, it is still
the agent for all the subsidiaries which were part of the original
consolidated group during the taxable periods in question. New
however, is a new entity carved out of old in the spin off. A spinoff is a divisive D
reorganization and as such is not subject to section 381(a). Since section 381(a) does not
apply to this transaction, new is not a proper party authorized under Temp. Treas.
Reg. § 1.1502-77T (a)(4)(ii) to sign a Form 872 for
for the tax years in question. Nevertheless, we can still address new Morton's
potential liability as a transferee with regard to these tax years by securing a Form 977 from
this entity. Though new and its subsidiaries have now been acquired by
Hass, new survives intact as a subsidiary. Thus, we do not believe that the
acquisition of new and its subsidiaries by changes how the Form 977
should be styled.
Accordingly, we recommend that a consent be obtained from
, which is styled exactly the same as the one procured in
In addition, a Form 977 consent regarding transferee liability should be obtained from

(new (new ). This should also be styled and completed exactly like that obtained in (new ).

B.

The consent secured from this entity should be styled identical to that secured in

### C. General

The consents obtained must be signed by currently responsible "Officers" with the apparent and actual authority to execute these forms for each of these surviving entities. In the case of a corporation, persons authorized to sign a consent include the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act whether or not that person was the same individual who signed the return.

Should you have any questions with respect to these matters, please contact the undersigned at (281) 721-7372.

BERNARD B. NELSON District Counsel

By:

MARION S. FRIEDMAN Assistant District Counsel

cc: Assistant Regional Counsel (TL), Midstates Region, Mark E. O'Leary
Assistant Regional Counsel (LC), Midstates Region, Rebecca W. Wolfe

TH 12/6/98